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**DIGEST OF OTHER RECENT VIRGINIA DECISIONS.****Supreme Court of Appeals.**

Note.—In this department we give the syllabus of every case decided by the Virginia Supreme Court of Appeals, except of such cases as are reported in full.

WALTON. WITTEN & GRAHAM *v.* MILLER'S ADM'X.

MILLER'S ADM'X *v.* NORFOLK & W. RY. CO.

Jan. 14, 1909.

[63 S. E. 458.]

**1. Negligence (§ 15\*)—Joint Tort-Feasors.**—Where the negligence of two parties produces a single and indivisible injury, they are joint tort-feasors, though acting independently.

[Ed. Note.—For other cases, see Negligence, Cent. Dig. § 18; Dec. Dig. § 15.\* 10 Va.-W. Va. Enc. Dig. 395; 13 Id. 212.]

**2. Death (§ 33\*)—Persons Liable—Joint Tort-Feasors.**—If the negligence and lack of ordinary care on the part of one party and the negligence and lack of ordinary care on the part of another are the efficient and proximate cause of a death, both are liable as joint tort-feasors, though there was no common duty, design, or concert of action between them.

[Ed. Note.—For other cases, see Death, Cent. Dig. § 49; Dec. Dig. § 33.\* 10 Va.-W. Va. Enc. Dig. 395; 13 Id. 212.]

**3. Railroads (§ 290\*)—Accidents to Trains—Obstructions on Tracks—Liability of Railroad Contractor.**—Contractors, engaged in excavating along a railroad's right of way, for the purpose of double tracking, owe to the trainmen the two-fold duty of exercising ordinary care not to obstruct the track, and, in the event that they do so, to use like care to warn them in time to enable them by the exercise of reasonable care to protect themselves from danger, and failure to discharge either duty constitutes actionable negligence.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 934; Dec. Dig. § 290.\* 7 Va.-W. Va. Enc. Dig. 365; 10 Id. 360.]

**4. Railroads (§ 297\*)—Accidents to Trains—Obstructions on Tracks—Liability of Railroad Contractor.**—In an action for the death of a trainman against contractors, excavating along a railroad right of way for a double track, due to a collision between a freight train and earth and rock thrown on the track by a blast, the evidence showed that blasts of the engine whistle, prior to the collision, were in response to signals from the conductor, and not to a flagging signal intended to warn the trainmen. Held, that this warranted an instruction that if the flagman knew, or by the exercise of ordinary care ought to

\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

have known, that the blasts were not in response to his flagging, but to signals from the conductor, he was not justified in discontinuing flagging.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 951; Dec. Dig. § 297.\* 7 Va.-W. Va. Enc. Dig. 365; 10 Id. 360.]

**5. Railroads (§ 297\*)—Accidents to Trains—Blasting on Right of Way—Evidence.**—Evidence held sufficient to justify a verdict for plaintiff in an action for the death of a trainman alleged to be due to the negligence of contractors in throwing earth and rock on the track while blasting on the right of way.

[Ed. Note.—For other cases, see Railroads, Cent. Dig. § 947; Dec. Dig. § 297.\* 7 Va.-W. Va. Enc. Dig. 365; 10 Id. 411.]

**6. Master and Servant (§ 93\*)—Injuries to Servant—Delegation of Duties Imposed by Law.**—A railroad company cannot escape liability for neglect of duties imposed on it by law in the interest of the safety of its servants and the public by delegation thereof to an independent contractor or otherwise.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 142; Dec. Dig. § 93.\* 9 Va.-W. Va. Enc. Dig. 668.]

**7. Master and Servant (§ 103\*)—Injuries to Servant—Delegation of Duty—Obstruction on Railroad.**—A railroad company could not delegate to a contractor engaged in excavating along its right of way for the purpose of double tracking the duty owed to its employees and the public to keep its track in safe condition free from obstructions, so as to avoid liability for the death of a trainman caused by failure of the contractors to give proper notice of a blast and a resulting obstruction.

[Ed. Note.—For other cases, see Master and Servant, Cent. Dig. § 175; Dec. Dig. § 103.\* 9 Va.-W. Va. Enc. Dig. 672.]

**8. Torts (§ 22\*)—Joint and Several Liability.**—Joint tort-feasors are jointly and severally liable.

[Ed. Note.—For other cases, see Torts, Cent. Dig. § 29; Dec. Dig. § 22.\* 9 Va.-W. Va. Enc. Dig. 672.]

**9. Contribution (§ 5\*)—Joint Tort-Feasors—Remedy Over.**—No right of contribution exists among joint tort-feasors or remedy over by one against the other.

[Ed. Note.—For other cases, see Contribution, Cent. Dig. § 6; Dec. Dig. § 5.\* 3 Va.-W. Va. Enc. Dig. 484.]

**10. Dismissal and Nonsuit (§ 26\*)—Dismissal as to One Codefendant—Action for Tort.**—Plaintiff in an action against joint tort-feasors may dismiss or discontinue as to one defendant without affecting his rights against the other.

[Ed. Note.—For other cases, see Dismissal and Nonsuit, Cent. Dig. § 46; Dec. Dig. § 26.\* 4 Va.-W. Va. Enc. Dig. 722.]

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.